STATE OF IOWA
BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD

WASHINGTON COMMUNITY SCHOOL DISTRICT, Public Employer/Petitioner, and SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 150, Respondent.	)	CASE NO. 5691

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PUBLIC EMPLOYMENT RELATIONS BOARD

RULING ON NEGOTIABILITY DISPUTE

During negotiations between the Washington Community School District (District) and Service Employees International Union Local 150 (Union) for a successor collective bargaining agreement to become effective July 1, 1997, the Union offered certain proposals which the District believed were not mandatory subjects of bargaining within the meaning of section 9 of the Public Employment Relations Act, chapter 20, Code of Iowa (the Act).

The District filed a petition for expedited resolution of negotiability dispute with the Public Employment Relations Board (PERB or Board) pursuant to PERB subrule 621-6.3(2). Oral arguments were presented to the Board on May 20, 1997, by Brian Gruhn, attorney for the District, and by Matthew Glasson, attorney for the Union. The Board issued its preliminary negotiability ruling on May 21, 1997. On June 4, 1997, the Union filed a request for a final ruling by the Board. Accordingly, we hereby issue the following:

CONCLUSIONS OF LAW

The first proposal at issue states:

a. Article 4 Overtime

> 4.4 All non-certified employees are to receive one hour of incentive pay each month they have perfect attendance. Paid holidays, paid vacations, any paid leaves provided by this article, in-service days, and school cancellations are not considered absences. The incentive pay will be one hour of regular time pay, and will be paid to the employee in the pay check of the month following the month the perfect attendance occurred.

This proposal is similar to one we found permissive in City of Newton, 94 PERB 5077 and 5079. The proposal at issue in that case provided for quarterly lump sum cash payments to certain employees who did not utilize sick leave during that quarter. We found such an incentive payment did not fall within the category "leaves of absence" because it did not deal with a type of leave or conditions under which employees may take or return from leave, but rather specifically related to a financial benefit to be received when a leave of absence was not utilized. We further concluded that the proposal did not fall within the narrow definitions of "wages" or "supplemental pay" established by the Iowa Supreme Court in Charles City Education Association v. PERB, 291 N.W.2d 663, 666 (Iowa 1980), and Fort Dodge Community School District v. PERB, 319 N.W.2d 181, 183 (Iowa 1982).

We conclude the proposal at issue here is permissive, based on the same reasoning applied in City of Newton.

The second proposal at issue states:

b. Article 4 Overtime

> 4.5 No overtime shall be worked without the approval of the responsible administrator. Provided, however, that employees in the Custodial Department may work up to 76 hours of overtime per year without prior approval to the extent such practice would be consistent with the outcome of the grievance arbitration now pending.

From the arguments of the parties, it is apparent that the first sentence of the proposal is not at issue in this case.

Regarding the second sentence of the proposal, we note that the Iowa Supreme Court has stated in State v. PERB, 508 N.W.2d 668 (Iowa 1993), "When framing the scope of a disputed proposal topic, we are concerned with determining what the employer would be bound to do if a proposal were taken to arbitration and incorporated into a collective bargaining agreement." Id., p. 675. Because the second sentence of the proposal at issue here relies for its meaning on a reference to a pending grievance arbitration, it is impossible to determine by reading the proposal on its face what it would require the employer to do or whether it involves a mandatory subject of bargaining.

In addition, we do not believe the proposal falls within the Iowa Code section 20.9 topic "grievance procedures for resolving any questions arising under the agreement" as urged by the Union. The proposal has nothing to do with what the grievance procedure itself should be or how it should operate, but rather, purports to incorporate by reference into the new contract the substantive terms of a yet to be issued grievance arbitration award presumably involving an interpretation of the hours or overtime provisions of

the contract. It does not propose grievance procedures for resolving any questions arising under the agreement, but, rather, proposes to utilize a grievance arbitration award as a means of setting the terms of that agreement.

For all of the foregoing reasons, we conclude the proposal is a non-mandatory subject of bargaining.

DATED at Des Moines, Iowa this 13th day of August, 1997.

PUBLIC EMPLOYMENT RELATIONS BOARD

Richard R. Ramsey, Chairman

M. Sue Warner, Board Member

Elizabeth L. Seiser, Board Member